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APPLICATION NO.	. FILING	G DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,996	01/31/2002		Thomas Hoell	MR-25PCT	2238
26875	7590	01/26/2005		EXAMINER	
•		VANS, LLP	JUNG, WILLIAM C		
2700 CAREW TOWER 441 VINE STREET				ART UNIT	PAPER NUMBER
CINCINNA	CINCINNATI, OH 45202			3737	<u></u>
				DATE MAILED: 01/26/2009	ς.

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)					
	09/831,996	HOELL ET AL.					
Office Action Summary	Examiner	Art Unit					
	William Jung	3737					
The MAILING DATE of this communication appeared for Reply	pears on the cover sheet with the c	orrespondence addr ss					
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a rep If NO period for reply is specified above, the maximum statutory period Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailin earned patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply be tin ly within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from a, cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).					
Status							
1) Responsive to communication(s) filed on 20 A	ugust 2004.						
2a)⊠ This action is FINAL . 2b)☐ This							
•	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims							
4) Claim(s) 18-24 is/are pending in the application 4a) Of the above claim(s) is/are withdra 5) Claim(s) is/are allowed. 6) Claim(s) 18-24 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or	wn from consideration.						
Application Papers							
9) The specification is objected to by the Examine	er.						
10) The drawing(s) filed on is/are: a) acc	cepted or b) objected to by the I	Examiner.					
Applicant may not request that any objection to the	drawing(s) be held in abeyance. See	e 37 CFR 1.85(a).					
Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Example 11.	•						
Priority under 35 U.S.C. § 119							
 12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority document application from the International Bureat * See the attached detailed Office action for a list 	ts have been received. ts have been received in Applicati ority documents have been receive u (PCT Rule 17.2(a)).	on No ed in this National Stage					
Attachment(s)							
1) Notice of References Cited (PTO-892)	4) Interview Summary						
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 	Paper No(s)/Mail Day 5) Notice of Informal F 6) Other:	ate Patent Application (PTO-152)					

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed August 20, 2004 have been fully considered but they are not persuasive.

Examiner respectfully disagrees with the Applicant's assertion that Shahidi does not teach use of constant DC magnetic field in the navigation environment. The MRI system used in Shahidi has constant DC magnetic field. In addition, Shahidi clearly anticipates optical tracking system where the optical sensors 106, 107, 108 tracks the surgical instrument 109. Furthermore, Shahidi discloses computer memory with software means for operating and controlling the position tracking system where the computer is coupled with display 102 to provide medium for image feedback and user input (col. 6, lines 22-34). The rejection from the previous Office Action dated May 20, 2004 is repeated below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 18-24 are rejected under 35 U.S.C. 102(e) as being anticipated by *Shahidi* (US 6,167,296).

Shahidi anticipates all claimed features in claims 18 and 20-24. Shahidi disclose a volumetric image navigation to assist surgical procedure by tracking surgical device. Specifically, in figure 1-3, 6, and 8, Shahidi illustrates a navigation system including an image database 301 receive and load images of patient from image acquisition system such as MRI, CT, Pet, etc., computer with a monitor 201 and 102, for displaying image data, tracking device 402, 502 with constant DC magnetic field from MRI, a pointer 113 navigation instrument with aforementioned magnetic field detecting position associated with the pointer navigation instrument, which is directly linked with image update 407 from the image tracking, means for extracting anatomical features (segmentation unit 615 in figure 6), and menu-guided control of the system to control the tracking of the pointer navigation instrument (col. 5, line 30 – col. 7, line 65; col. 8, line 18 – col. 9, line 50).

Claim 19: Shahidi illustrates in figure 9-14 where the CT or MRI system is used to tracking navigation instrument to provide pre-operation image data from a craniotomy.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Jung, Ph.D. whose telephone number is 571-272-4739. The examiner can normally be reached on Mon-Fri 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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January 23, 2005

BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TO SUPER 3700